IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 9400 of 2007(R)

PETITIONER:

APPUKUTTAN VALLIKUNNU,
24 ACS SCHOOL ROAD, KALOOR, KOCHI-17.

BY ADV. SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, LABOUR AND REHABILITATION
(A) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE LABOUR COMMISSIONER,
THIRUVANANTHAPURAM.

3. DESHABHIMANI DAILY, REPRESENTED BY ITS
GENERAL MANAGER, KALOOR, KOCHI-17.

BY ADV. SRI.K.BALACHANDRAN (MANGALATH)
BY ADV. SRI.RAJESH NAIR
BY GOVERNMENT PLEADER SRI.T.B.HOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.9400 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Press release dtd.11.6.2000 issued by R3.

Ext.P2: Copy of the charge sheet issued by R3 on 15.9.2000.

Ext.P3: Copy of the explanation submitted by the petitioner before R3 dtd.9.10.2000.

Ext.P4: Copy of the complaint submitted by the petitioner before R2 on 8.2.2005.

Ext.P5: Copy of order dtd.12.12.05 issued by R3.

Ext.P6: Copy of letter dtd.26.12.05 sent by the petitioner to R3.

Ext.P7: Copy of complaint submitted by the petitioner before R2 dtd.4.1.2006.

Ext.P8: Copy of order dtd.9.8.06 issued by R1.

Ext.P9: Copy of representation dtd.29.9.2006.

Ext.P10: Copy of application dtd.23.1.2007.

Ext.P11: Copy of Govt. letter dtd.27.2.2007.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 9400 OF 2007 - R

Dated this the 10th day of August, 2007

J U D G M E N T

The petitioner is a former employee of the Malayalam daily “Deshabhimani”. He sought to raise an industrial dispute by filing Exts.P4 and P7 complaints before the Labour Commissioner, Thiruvananthapuram. The conciliation failed and the Government, after considering the report of the Conciliation Officer, referred the following issue for adjudication by the Labour Court, Ernakulam.

> “(i) Whether the Management of Deshabhimani has legally terminated the service of Appukuttan Vallikunnu, Associate Editor by paying Gratuity as the only terminal benefit.
>
> (ii) If not, what is the relief available to him for the period for 9.9.1998 (the alleged date of denial of employment) till his age of retirement. “

Aggrieved by the issue referred, taking the contention that the real issue raised by the petitioner as per

Exts.P4 and P7 has not been referred for adjudication by the Government as per Ext.P8, the petitioner filed Ext.P9 application before the Government for amending the order of reference. The same has been rejected by Ext.P11. The petitioner seeks a direction to modify Ext.P8 reference order as claimed in Ext.P9.

2. Understandably, both the Government as well as the third respondent--Management stoutly opposes the prayer of the petitioner. According to them, the issue referred is the only issue arising out of the complaint raised by the petitioner. The first respondent, in their counter affidavit, stated as follows in para 7:-

> "7. The terms of reference in Ext.P8 Government Order was decided by the Government on the basis of the suggestion of the Conciliation Officer, which was recommended by the Labour Commissioner also. The Government had accepted the suggestion and recommendation since the issue to be referred was correctly framed by the Conciliation Officer. The petitioner who is one of the parties to the dispute has no right to claim that the issue must be framed as desired by him. No valid grounds have been made out by the petitioner to modify or alter Ext.P8"

3. I have considered the rival contentions in detail. I have gone through the complaints Exts.P4 and P7 filed by the petitioner before the Conciliation Officer. In that, the specific contention of the petitioner is that from 9.9.1998 onwards, the petitioner has been denied employment. He has further taken a contention that subsequent disciplinary action on the ground of unauthorised absence is vitiated by mala fides. That being so, I am not all satisfied that the issue referred as quoted above is the real issue arising out of the conciliation proceedings.

4. Under the Industrial Disputes Act, the duty of the Government, after considering the failure report of the Conciliation Officer, is to frame the issue as arising out of the conciliation proceedings. The petitioner had specifically raised these two issues namely, denial of employment to him and the validity of subsequent disciplinary proceedings on the ground of unauthorised absence. In the above circumstances, I am inclined to quash Exts.P8 and P11. In view of the entities involved,

especially since the management establishment is owned by a constituent of the Left Democratic Front which rules the State now, I feel that instead of directing the Government to reconsider the matter, in order to avoid further disputes in the matter which is likely to arise if it is again left to the Government, I am inclined to redraft the issues for reference to the Labour Court for adjudication.

5. On a perusal of Exts.P4 and P7 and after hearing the arguments of learned counsel for the petitioner and the counsel for the third respondent, I am satisfied that the following issues, which arise out of the complaints filed by the petitioner, need to be adjudicated by the Labour Court.

> **(i) Whether the management of Deshabhimani Daily, Deshabhimani Road, Kaloor, Kochi-682 017 has denied employment to Sri.Appukkuttan Vallikkunnu, Associate Editor of the Deshabhimani Daily with effect from 9.9.1998?**
>
> **(ii) Whether the subsequent disciplinary proceedings against**

Sri.Appukkutan Vallikkunnu on the ground of unauthorised absence are invalid for any reason?

(iii) If the answer to the first two issues are in the affirmative, what relief the workman is entitled to?

6. In the above circumstances, I quash Exts.P8 and P11 and direct the first respondent to refer the above three issues for adjudication by the Labour Court. Orders in this regard shall be issued within a period of one month from the date of receipt of a copy of this judgment. I make it clear that by framing these issues, my intention was not to prevent the management from raising any of their contentions in the dispute and all contentions available to the management in the industrial dispute are left open to be raised and agitated by them before the Labour Court in the adjudication proceedings, pursuant to the reference to be so made.

The writ petition is disposed of with the above direction.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007